

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Co. Change of Zone 210

DATE: December 18, 2002

PROPOSAL: A change of zone from AG Agriculture to AGR Agricultural Residential

LAND AREA: 20.65 Acres, more or less

CONCLUSION: Without a rating standard in place and an evaluation of the fiscal impact of rural development, it is not possible to do a review and recommendation as stated in the 2025 Comprehensive Plan, therefor, this application should be deferred until the fiscal impact study is completed and the review performance standard is developed. However, if action is desirable at this time, the evidence to date indicates the application should be denied.

RECOMMENDATION:

Deferral

Denial if action is requested

GENERAL INFORMATION:

LEGAL DESCRIPTION: The south 20.65 acres of Lot 15 I.T. in the SE 1/4 of Section 20, T 10 N, R 5 E of the 6th P.M., Lancaster County NE.,

LOCATION: Generally located at S.W. 126th Street and W. "O" Street (Hwy 6).

APPLICANT: Jack W. and Joy L. Duke
300 N.W. 126th Street
Lincoln, NE 68528
(402) 477-1812

OWNER: Jack W. and Joy L. Duke

CONTACT: Jack W. or Joy L. Duke
(402) 477-1812

EXISTING ZONING: AG Agriculture

EXISTING LAND USE: Two residences and outbuildings

SURROUNDING LAND USE AND ZONING:

North: Ag land and two residences , zoned AG Agriculture, I-80 further north.

South: Ag land, two residences, zoned AG Agriculture

East: Ag land, zoned AG Agriculture

West: Ag land, zoned AG Agriculture

ASSOCIATED APPLICATIONS: None

HISTORY: Changed from County AA Rural and Public Use to AG Agriculture in the **1979** Zoning Update. The Assessors office shows the 20.6 acre lot was sold off of the 45.76 IT in 1998.

COMPREHENSIVE PLAN SPECIFICATIONS: This area is shown as Agricultural on the Land Use Plan (pg F 23). This is outside the Lincoln growth tiers. The 2025 Comprehensive Plan states:

“Currently, acreage development has occurred under two development scenarios: AG - Agricultural District (minimum of 20 acres per lot area) and AGR - Agricultural Residential District (minimum of 3 acres per lot area) with the possibility in both AG and AGR zoning districts of clustering units together in order to preserve more open space and agricultural areas and/or receive additional density bonuses under a community unit development. The complex issue of acreage development and other public objectives requires a large array of land use strategies. (F70)

Acknowledge the “Right to Farm” and preserve areas for agricultural productions throughout the county by designating specific areas in advance for rural residential so as to limit areas of potential conflict between farms and acreages. (F70)

Specific areas will be designated so that approximately 6% of the total population in the County can be accommodated on acreages. Grouping acreages together in a specific area enables services to be provided more efficiently, such as reducing the amount of paved roads, fewer and shorter school bus routes and more cost effective rural water district service. Grouping also reduces the amount of potential conflict points between farm operations and acreages. (F70)

In determining areas of higher density rural acreage (200 units or more per square mile), numerous factors will be reviewed, such as but not limited to water and rural water districts, soil conditions, roads, agricultural productivity, land parcelization, amount of existing acreages, and plans for urban or town development. Acreages should develop in areas that best reflect the carrying capacity of that area for acreages. A performance criteria should be

developed to review requests for acreage zoning and to determine where these standards can best be met. (F70)

Development of a performance standard “point system” will allow the location of higher density rural acreage development in either “AG” or “AGR” where the review criteria can be met. This allows equal treatment across the county, maximum freedom of determination of marketing and sale, while locating those developments only in those areas where sufficient “points” can be accumulated to justify the development at the requested location.” (F 71)

UTILITIES: Not available. This area is outside the rural water districts.

TOPOGRAPHY: Gently rolling hills, falling off to the northeast.

TRAFFIC ANALYSIS: N.W. 126th Street is a paved county road. West “O” Street is U.S. Highway 6.

PUBLIC SERVICE: This area is served by the Haines Branch School District, the Malcolm Rural Fire District, and is in the Norris Public Power District service area.

REGIONAL ISSUES: The location of acreage development and farming. Development along West “O”/Hwy 6.

ENVIRONMENTAL CONCERNS: There are no Historic or Ecological resources identified on this site. A state lake is about one mile north of this site. The soil rating is approximately 3.3 on a scale of 1 to 10, where 1-4 is prime soil. This is prime agriculture soil. No feeding operations were noted in the area.

AESTHETIC CONSIDERATIONS: NA

ALTERNATIVE USES: Farming uses and one dwelling on the 20 acre parcel.

ANALYSIS:

1. This proposal is for a change of zone on a 20.65 acre parcel to allow two lots. The applicant has moved a second dwelling onto the lot, which is not permitted under the current zoning, and is requesting the change of zone in order to create a separate lot for the new dwelling.
2. A “farm “ can have more than one farm dwelling, but not more than one unit per 20 acres.

3. Prior to September 2002, the County Attorney had ruled that no building permits were required on parcels over 20 acres in size. Zoning control of uses still applied.
4. On September 2002, the County Board passed resolution #02-0106 requiring building permits for all dwellings on all lots. The State statutes has been changed to allow this.
5. There appears to be a small contractors yard and office on the site for the Duke Demolition Company. This is not a permitted use in the AG District.
6. Under the current zoning;
 - a) only one dwelling is allowed
 - b) a construction company is not a permitted use,
 - c) a second dwelling on the 20 acre parcel is not a permitted use,
 - d) building permits are required on all dwellings.
7. The 2025 Comprehensive Plan calls for a performance standard “point system” to review those applications for higher density that are not shown for acreage use. The performance standard point system has not been developed nor a rating system accepted for review of these types of applications
8. The County Engineer recommends denial
9. Development potential of this land would be one dwelling unit under the AG zoning and about six dwellings under AGR zoning.
10. Some acreage review issues can be addressed in this report:
 - a) Water/rural water,
Ground water information is lacking and this is an area known for potentially poor quantity and quality, this is not in a rural water district.
 - b) Road access and paving,
Highway 6 is a paved major road and NW 126th Street is a paved county “recreation road” (e.g., built by the state for access to a recreation area).
 - c) Soil rating,
The soil is prime ag land of the county.
 - d) Development of the area/land parcelization,
The land in this area is in substantially larger parcels of 20, 40 and 80 acres in area.

e) Existing acreages,

There is little acreage development in this immediate area. Highway 6 has few acreages along its frontage at this location. There are three abutting 10 acre or larger home sites. Some acreages occur to the northwest along the south side of the Interstate.

f) Conflicting farm uses,

There are no farm feeding operation or other conflicting farm uses noted in a field check.

g) Environmental issues,

There are no known environmental issues with this land. There is no flood plain identified.

h) Impact on other governmental entities,

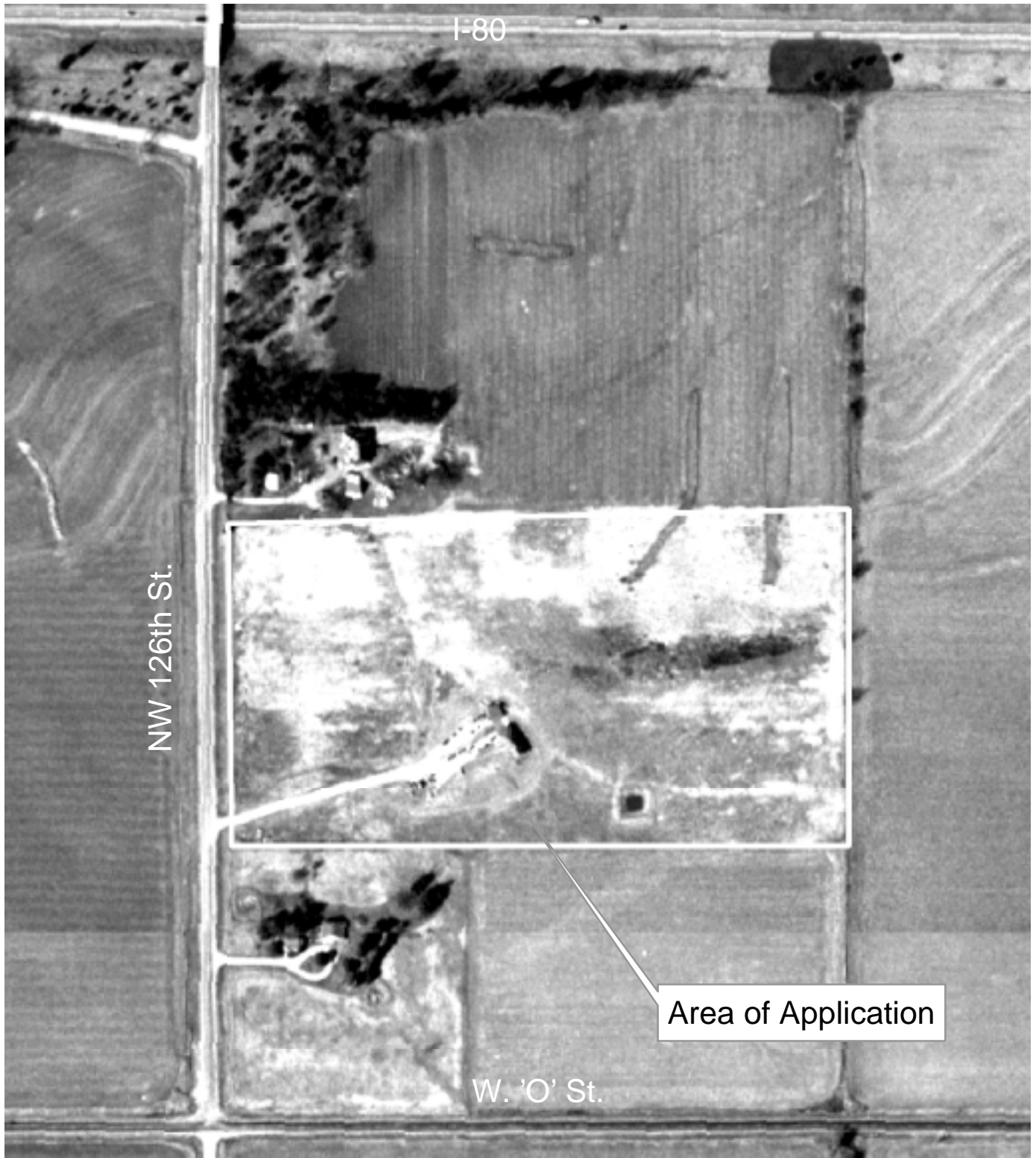
This will increase demand for service on the Sheriff, Rural Fire, School and others. The level of impact is not known.

i) Plans of other towns,

There are no towns in close proximity .

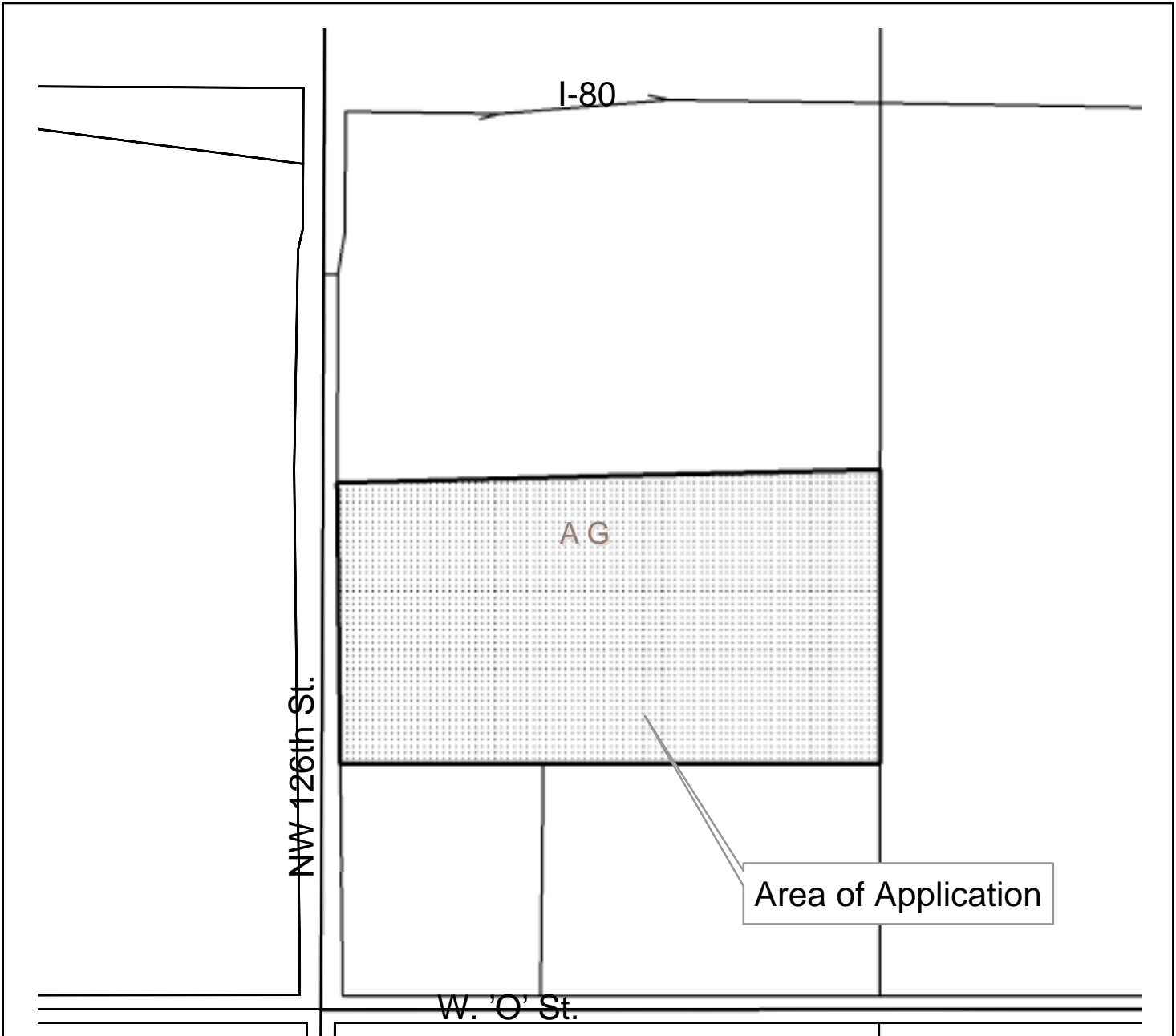
Prepared by:
Mike DeKalb, AICP

Planner



**County Change of Zone #210
NW 126th & West 'O' ST.**



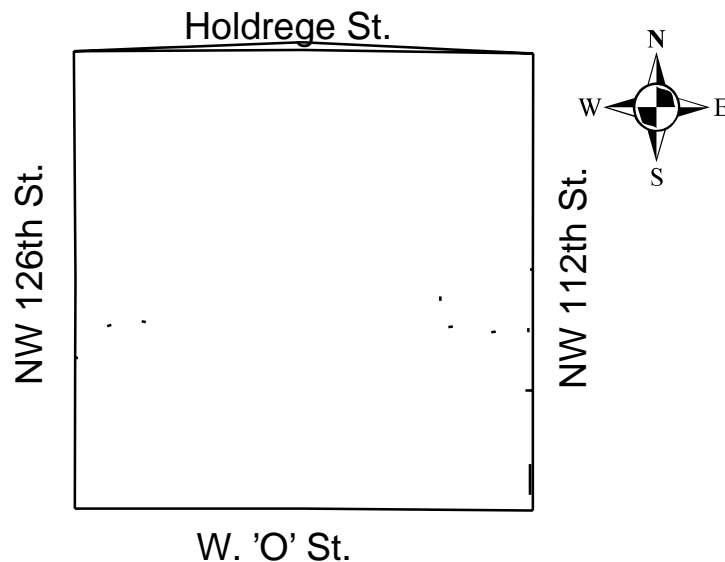
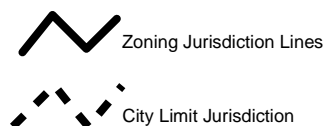


County Change of Zone #210 NW 126th & West 'O' ST.

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 20 T10N R05E



Duke

300 NW 126th
Lincoln, NE 68528
Ph: 402-477-1812
Fax: 402-477-3166

December 4, 2002

Mike Dekalb
Lincoln / Lancaster County Planning Department
555 South 10th Street, Suite 213
Lincoln NE 68508

Dear Mr. Dekalb,

When we bought our land 5 years ago and started to build our house, we were told we did not need a building permit because of having more than 20 acres. Our intention has always been that someday our children or family members would be able to have a place to put a house if the need arose.

In August of this year, my youngest sister lost her husband in a car accident in Iowa. After this happened she moved with her children to Nebraska. Because she is a single mother with two children left at home and she does travel for her job, we all thought it would be best if a modular was placed on our land for her and her children to live. This way we would be able to help her with the children especially when she is gone as this would cause less disruption in their lives with school and everyday routines.

The first part of October I called Building and Safety Department to inquire if we needed any permits to do this. I talked to a women in this office and told her my name and address and that I wanted to place a modular home onto my land for a family member to move into. I asked her if I needed a permit for this. She asked how many acres I had and I told her 20 and she said no permit was required except for the Health Department for the lagoon and a compliance inspection and then she gave me the phone number for the Health Department. I called the Health Department and they told me I needed to come in and pick up forms for this. I went in and picked up the forms and spoke with an inspector and told him everything about what I was doing. He knew where I lived because he was who I spoke with about my home when it was built. I asked him if it would be possible to get the digging done while waiting on my permit since winter was coming on and he had given me the specifications required for the lagoon. He told me that was alright.

Because of the information I was given that we did not have to have a building permit and were given the go ahead to dig the lagoon, we went ahead with getting the prep work done for placing the house. We dug the lagoon, placed the concrete footings needed for the house, had

the well dug and piped, and have had a transformer placed for this. We then went to the Building and Safety Department to check on the process for getting an address for this house. At this time, the lady at the counter told us that if we were placing a modular home that we did need to have a permit and gave us the paperwork for it. We took the paperwork and got all the specifications and information requested for the house. I called the Building and Safety Department regarding some questions I had on this. I was also told during this conversation, that there would be no problem with placing this house on our property. My wife and sister went to the Building and Safety Department to turn in the paperwork for this and were told that the only way this could be done was if my sister was a family member with a vested interest in the farming operations of the land and we wrote a letter stating this.

By this time, it is late November and I called back to the Building and Safety Department and was told then that I can't do any of this because of zoning regulations unless I broke up my land into smaller parcels and changed the zoning.

I have already put \$13,000 into digging the lagoon, placing concrete, digging the well and piping, and electrical work. Also, the modular house for \$71,400 has already been purchased. I have tried very hard to go through the proper channels and am trying to get this accomplished so that my family can be in their home by Christmas. If the zoning regulations have never been changed then how can properties around us have 2 homes.

I am also enclosing some information that shows the make up of the area. To the south of us there are two lots owned by different people. One lot is 6.34 acres and has a house on it, the other is 10.72 acres and doesn't have a house on it. Both of these aren't crop land as they only have the grass cut and bailed. To the north, the property is 25.107 acres and has two houses on it and they raise grapes and grow hay. This property was owned previously by the same people that we purchased our property from. The two houses on this property are one that is the original house that was on the property and the other is a new house that was built at the same time we built our house giving us the impression that what we were told about putting another house on our property was correct. Our property between these is 20.653 acres and has our house on it and we grow hay on the land that is excess from our where our house is placed. So as you can see, this area is mainly residential with minor farming operations of hay being grown.

We bought this much land with the thoughts that if a situation like this came up, we would be able to help. I tried to go through the proper channels but evidentially there must have been a misunderstanding of what I was asking. I am asking for your help to get my family moved in and start living. I wish to make my land into (4) 5 acre sections so we don't run into this problem in the future. By doing this now, we would know that we do need a permit from this point forward to do anything.

Sincerely,

Jack W. Duke, Jr.

25.107 +/-
AC

LOT 15
45.76 | Ac.

20.65 +/-
Ac

area of application

LOT 14
6.34 | Ac.

LOT 10
10.72 | Ac.



N.W. 126th Street

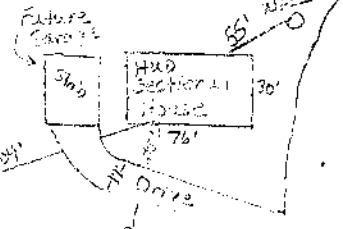
N 00°51'20"W
655.70'M

N 00°00'00"E
31.49'M

N 88°31'56"E
1286.96'M

S 00°10'39"E
715.15'M

Proposed House



20.653 AC. +/-
1259.54 +/-
899.64 +/-
59. Fl. +/-



Existing house.

S 89°46'45"W
1278.97'M 1280.91'M

N →

244/573/111

INTERSTATE

11
bus
000

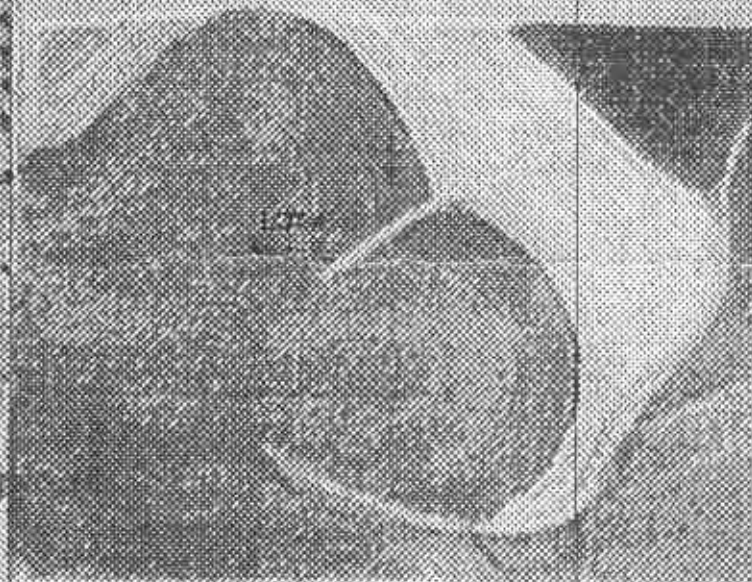


area of
expansion

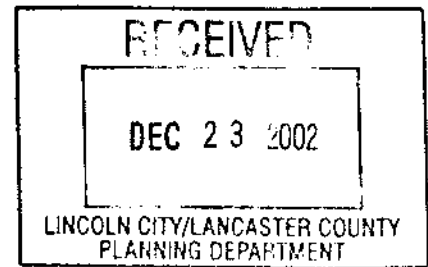
104



LOT 10
104



↑
N



**To: Mike DeKalb, Planner
Lincoln/Lancaster County
Planning Department
555 South 10 Suite 213
Lincoln NE 68508**

**From: Richard Hedges
100 NW 126th St.
Lincoln NE 68528
402-475-8221**

**Re: Jack Duke, Duke & Co. (demolition)
300 NW 126th St.
Lincoln NE 68528**

I believe that it is unfair when all developers must follow the law and common sense, but Mr. Duke of Duke & Co. thinks he can have another well drilled, move a second house in, etc. etc., and not have to worry about planning/zoning.

Mr. Duke now has a very noisy business going there and would like to expend it even more. I thought you need 20 acres now to build even one house. I also thought you couldn't run a big business out of your home on 20 agricultural acres. He does. Mr. Duke defies any rules, deliberately.

Harold Deinert, a farmer and large landowner east of Duke's is opposed to any zoning change. In Lincoln I would be protected from a loud, noisy business just moving in without a zoning change. What about Lancaster County?

Please do not change this zoning.

Richard Hedges
Richard Hedges

Letter also to Abigail Posie Davis

Mr. DeKalb: Would you be kind enough to send a copy of this letter to the County Commissioners? Thank you.



Lancaster

County

Engineering

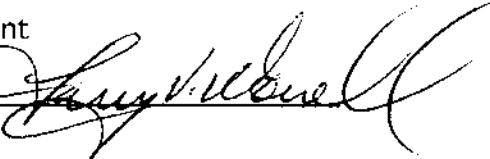
Department

DON R. THOMAS - COUNTY ENGINEER

DEPUTY- LARRY V. WORRELL
COUNTY SURVEYOR

DATE: December 19, 2002

TO: Mike DeKalb
Planning Department

FROM: Larry V. Worrell
County Surveyor 

SUBJECT: CHANGE OF ZONE #210
NORTH 126TH STREET AND WEST "O" STREET

Upon review, this office would have the following comments:

- 1) Allowing a Change of Zone for a parcel of land less than 80 acres does not provide for a conducive street network for the future
- 2) Not designated in the Comprehensive Plan for this type of development

Therefore, this office would not recommend approval of this application.

LVW/cm
ZONE/North 126th and West O Mem

